ATTORNEY FOR APPELLANT:

TERRY A. WHITE
Olsen, White & Hambridge
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

BARBARA A. NARDI
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DARRELL W. MITCHELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 63A01-0610-CR-436
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PIKE SUPERIOR COURT
The Honorable W. Timothy Crowley, Special Judge
Cause No. 63C01-0404-FA-00207

March 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Darrell W. Mitchell appeals his conviction for Aiding Another Person in Dealing in Methamphetamine,[1] a class B felony. Specifically, Mitchell contends that the conviction must be vacated because the trial court erred in denying his motion for change of venue. Finding no error, we affirm the judgment of the trial court.

FACTS

Mitchell and two acquaintances—Jeffrey Robbins and Kenny Schafer—resided in Gibson County for a number of years. Robbins and Schafer "cooked" methamphetamine in a wooded area in Gibson County every two or three weeks from the spring of 2001 until November 2001. Tr. p. 141-42. On November 6, 2001, Robbins went to Mitchell's residence and asked him whether he had any drugs. After Mitchell responded that he did, the two entered Mitchell's garage and smoked methamphetamine.

Later that day, Robbins and Schafer went to Robbins's home, smoked methamphetamine, and "crushed [ephedrine] pills." Id. at 149, 222, 237. At some point, Schafer left the residence to purchase cigarettes and gasoline. When he returned, he told Robbins that the police were following him. Thereafter, Robbins and Schafer noticed an Oakland City Police vehicle sitting in a funeral home parking lot that was approximately one and one-half blocks from Robbins's home. As the pair drove to Robbins's mother's house, the police car followed them.

Thereafter, the two men drove to Mitchell's residence, where they asked Mitchell if they could use his Jeep to drive to the area where they usually cooked methamphetamine.

[1] Ind. Code § 35-41-2-4(a); Ind. Code § 35-48-4-1(a)(1)(A).

Mitchell agreed, went into his house, and returned with the keys to his Jeep and some marijuana.

Schafer's vehicle contained "all the precursors" required to make methamphetamine, including several cans of ether, crushed pills, batteries, and some "anhydrous." Id. at 159, 160, 169. After the men assembled these items in duffel bags, Robbins and Schafer tossed the bags over the fence into Mitchell's yard. Mitchell helped load the bags into his Jeep. Thereafter, Robbins and Schafer left the residence and began driving down an alley. Shortly thereafter, they observed several police cars parked at the Volunteer Fire Department, which was near Mitchell's residence.

Robbins and Schafer proceeded to Highway 64, which was the fastest route to the area where they normally cooked methamphetamine. Because of the police presence, Robbins believed that they had to "get out of town quick." Id. at 187. From Highway 64, Robbins made a left turn and entered Pike County. Robbins knew that if he turned left again, they would be headed back toward Gibson County. Thus, Robbins made a left turn and proceeded down a gravel road. At some point, Robbins tried to stop the Jeep, but the brakes failed. Immediately thereafter, the vehicle spun around and turned over. Schafer was pinned under the Jeep and died at the scene.

As a result of the incident, Mitchell was charged in the Pike Superior Court with the above offense, along with one count of conspiracy to deal in methamphetamine. A jury trial commenced on August 14, 2006, and at the close of the State's case-in-chief, Mitchell filed a

motion to dismiss the charges for improper venue, claiming that the "case was filed in the wrong county." Appellant's App. p. 48. However, Mitchell clarified that the case should be transferred to Gibson County for trial. The trial court denied the motion, and Mitchell was found guilty of both offenses. Thereafter, on September 8, 2006, Mitchell was sentenced to ten years on the dealing charge[2] with all time suspended to probation. He now appeals.

DISCUSSION AND DECISON

In determining whether the trial court erred in denying Mitchell's motion for change of venue, we note that Article 1, Section 13 of the Indiana Constitution states that "In all criminal prosecutions, the accused shall have the right to a public trial . . . in the county in which the offense shall have been committed." As venue is not an element of the offense, the State is required to prove venue by a preponderance of the evidence rather than beyond a reasonable doubt. Smith v. State, 835 N.E.2d 1072, 1074 (Ind. Ct. App. 2005). If the defendant challenges venue at the conclusion of the State's case, the question becomes one of sufficiency of the evidence supporting the conclusion that the defendant was tried in the proper county. Id.

That said, we treat a claim of insufficient evidence of venue in the same manner as other sufficiency challenges. This court neither reweighs the evidence nor assesses witness credibility and looks only to the evidence and the reasonable inferences therefrom that support the conclusion of requisite venue. Chavez v. State, 722 N.E.2d 885, 895 (Ind. Ct. App. 2000). Venue may be established by circumstantial evidence. Abran v. State, 825

[2] The trial court merged the conspiracy charge into the dealing count. Appellant's App. p. 31.

N.E.2d 384, 392 (Ind. Ct. App. 2005), trans. denied. The State meets its burden if the facts and circumstances of the case permit the jury to infer that the crime occurred in a given county. Id.

In this case, Mitchell argues that the evidence was insufficient to establish venue in Pike County because "the entire nexus and facts surrounding this situation occurred in Gibson County. Only by mistake and coincidence did the co-conspirator[s] end up in a fatal accident in Pike County but for a brief few minutes as they were heading back towards their cooking site in Gibson County." Appellant's Br. p. 7.

In addressing Mitchell's contention, we find our opinion in Abran instructive. In Abran, the defendant was convicted of possession with intent to deliver methamphetamine, possession of amphetamine, and other related offenses. Abran contended that the State failed to establish venue in Pike County because the conservation officer spotted him in Gibson County and, if not for a police chase, he would have remained in Gibson County. Abran, 825 N.E.2d at 391-92. In affirming the defendant's convictions, we noted that

> [T]he facts and circumstances of the case permitted the jury to infer that all of the crimes were committed in Pike County. . . . In a similar drug dealing case, the appellant argued that the evidence was insufficient to establish venue in Tippecanoe County, where his "partner in crime" was arrested with drugs in his possession, because it was his partner's practice to sell the drug from his home in Montgomery County. [Chavez, 722 N.E.2d at 895]. However, at the time of his arrest, the appellant's partner was traveling in Tippecanoe County with two pounds of marijuana between his legs on the car seat. Id. at 896. We did not reweigh the evidence in that case, and we likewise cannot do so here. Venue was properly established in Pike County.

Id. at 392 (emphasis in original).

In this case, Robbins testified that he did not know why he made a right turn onto Highway 64 and entered Pike County when he and Schafer intended to visit their usual cooking site in Gibson County. Tr. p. 166, 185. However, Robbins acknowledged that he and Schafer believed that they were being watched or followed by city and county police. Id. at 149-51, 155-58, 181. In our view, the jury could reasonably infer that the reason for Robbins and Schafer's crossing from Gibson County into Pike County was their desire to leave town in light of their fear and concern that they were being pursued by officers of the Oakland City Police and Sheriff Department. It was also reasonable to infer that the police from Gibson County could not—or would not—follow Robbins and Schafer into Pike County.

In sum, the evidence at trial demonstrated that Robbins and Schafer drove Mitchell's Jeep on the roads of Pike County. It was established that they possessed and transported in Pike County the ingredients for the manufacture of methamphetamine. Thus, we conclude that venue was properly established in Pike County. As a result, the trial court properly denied Mitchell's motion for change of venue.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.